



Docket No.: 210237US0

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COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 09/903,606

Applicants: Odile AUBRUN-SONNEVILLE, et al.

Filing Date: July 13, 2001

For: WATER-IN-OIL EMULSION AND ITS USE AS A  
COSMTEIC

Group Art Unit: 1617

Examiner: Gina Yu

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SIR:

Attached hereto for filing are the following papers:

**Filing Letter;**  
**Executed Declaration of Odile Aubrun w/Attachments (Tab A).**

Our check in the amount of -0- is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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Docket No.: 210237US0



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :

Odile Aubrun-SONNEVILLE, et al. : EXAMINER: G. Yu

SERIAL NO: 09/903,606 :

FILED: JULY 13, 2001 : GROUP ART UNIT: 1617

FOR: WATER-IN-OIL EMULSION AND  
ITS USE AS A COSMETIC

LETTER

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

Submitted herewith is the Rule 132 Declaration referred to on page 12 in Applicants' Amendment and Request for Reconsideration filed May 9, 2005.

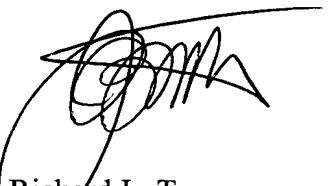
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Odile Aubrun-SONNEVILLE, et al. : EXAMINER: G. Yu.

SERIAL NO: 09/903,606 :

FILED: JULY 13, 2001 : GROUP ART UNIT: 1617

FOR: WATER-IN-OIL EMULSION AND  
ITS USE AS A COSMETICDECLARATION UNDER 37 C.F.R. 1.132ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

SIR:

I, Odile AUBRUN, hereby declare:

1. I am employed by L'ORÉAL as an engineer and have experience in the field of preparing and analyzing compositions.
2. The following experiments were carried out by me or under my direct supervision and control.

3. The following comparative compositions were prepared:

| Ingredient  | Comparative Example 1 | Comparative Example 2 |
|---|-----------------------|-----------------------|
| Isostearyl diglyceryl succinate (Imwitor 780 K)               | 2.21%                 | -----                 |
| Hexadecyl succinate of polyethylene glycol (5 OE) (acid form) | -----                 | 2.21%                 |
| isohexadecane   | 7.87%                 | 7.87%                 |

|  |          |          |
|--|----------|----------|
| Cyclohexasiloxane (8 CST) (Dow Corning 246 Fluid)  | 3.93%    | 3.93%    |
| Squalane (phytosqualane)   | 5.9%     | 5.9%     |
| Phenoxyethanol (and) methyparaben (and) ethylparaben (and) butylparaben (and) isobutylparaben (and) propylparaben (Phenoxyethanol) | 0.7%     | 0.7%     |
| Magnesium sulfate (Epsom salt)   | 0.8%     | 0.8%     |
| Water  | Qsp 100% | Qsp 100% |

Both comparative example 1 and 2 contain succinic surfactants having an apolar component containing less than 40 carbon atoms. Comparative example 1 contains a succinic surfactant having an apolar component containing 18 carbon atoms. Comparative example 2 contains a succinic surfactant having an apolar component containing 16 carbon atoms. Thus, neither of these compositions corresponds to the invention compositions for at least the reason that neither composition contains a surfactant containing an apolar component having at least 40 carbon atoms.

4. Neither comparative example 1 nor comparative example 2 resulted in a stable water-in-oil (W/O) emulsion. As demonstrated in photos I-IV attached at Tab A, comparative example 1 initially resulted in a heterogeneous emulsion with large oily globules having a viscosity of 10 poises (1 Pa.s). (Photo I). After three days, streaks had appeared on the inner wall of the container holding comparative example 1. Also, comparative example 1 had released oils. (Photo II). Both the streaks on the container wall and the release of oils are signs of emulsion instability. After one month, the emulsion had become even more

heterogenous. (Photo III). Also, oil release had continued. (Photo IV). Based on all of these observations, it is clear that comparative example 1 was not a stable W/O emulsion.

5. With regard to comparative example 2, it was impossible to prepare an emulsion. After 5 minutes at ambient temperature, a complete separation of oily and aqueous phases had occurred. (Tab A, Photo V). After two hours, completely separate oil and aqueous phases remained. (Tab A, Photo VI).

6. In contrast, it has been my experience that the invention compositions containing an emulsifier of at least one oligomer or one polymer derived from a polyolefin, comprising a polyolefinic apolar component comprising at least 40 carbon atoms and at least one polar component, are stable. For example, examples 1-3 in the present application disclose such compositions and these compositions form good emulsions which are stable for at least 2 months between at least 4 and 45°C. This difference in stability between the invention compositions and the comparative examples was surprising and unexpected.

7. The improved stability characteristics obtained with the claimed surfactants in the examples of the present application are representative of the present invention. That is, I would expect compositions containing an emulsifier of at least one oligomer or one polymer derived from a polyolefin, comprising a polyolefinic apolar component comprising at least 40 carbon atoms and at least one polar component to possess improved stability characteristics like those of the exemplified invention compositions. I have no reason to expect otherwise.

8. The difference in stability characteristics between the invention compositions and the comparative compositions demonstrates the surprising and unexpected benefit derived from having the claimed emulsifier comprising a polyolefinic apolar component comprising at least 40 carbon atoms and at least one polar component in the invention compositions.

9. The improved stability characteristics associated with the invention compositions are commercially significant. Clearly, stable emulsions are more commercially viable than unstable emulsions.

10. The undersigned petitioner declares further that all statements made herein of her own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

11. Further deponent sayeth not.

AUBRUN Odile  
Name

Odile  
Signature

12<sup>th</sup> May 2005  
Date